to say how or by whom he has been black-listed; and for this additional injury, he claims general damages. The principles upon which damages can be awarded for wrongful dismissal were discussed at length by the House of Lords in *Addis v. Gramophone Co.*[5] and it was there clearly laid down that the damages cannot include compensation for the manner of the dismissal, for injured feelings or for loss sustained by reason of the fact that the dismissal of itself makes it more difficult to obtain fresh employment. Lord Shaw of Dunfermline pointed out that wrongful dismissal may be accompanied by circumstances which give rise to a separate cause of action and when this occurs the remedy does not merge with the proceedings for wrongful dismissal but remains available at law to the plaintiff if he wishes to pursue it. So far as the action for wrongful dismissal is concerned, the damages are limited, as Lord Atkinson indicated, to one or possibly, two heads : first, compensation for loss of the emoluments which would have been earned but for the breach of contract, and possibly, secondly, compensation in respect of the time which might reasonably elapse before the plaintiff could obtain fresh employment. Damages under the first head are covered in the present case by the special damages with which I have already dealt. It will be observed that the second head is referred to by Lord Atkinson only as a possible head of damages and there does not appear to have been any decision since that case which has resolved the doubt. I do not, however, find it necessary to decide this point because on the facts of the present case there was a period of four months between the date of the wrongful dismissal and the date when the contract would normally have expired which, in my opinion, was a reasonable period in which the plaintiff could seek fresh employment. The fact that the plaintiff did not obtain fresh employment during this period may have been due, as he thinks, to his being black-listed or to the fact that there was, as the Deputy Shipping Master of the government marine department said in evidence, a surplus of master mariners in Singapore or to some other cause. But whatever the reason, it was not, in my opinion because the period between dismissal and the normal date expiry of the contract was unreasonably short and consequently no damages are recoverable under this head, assuming it to be a legitimate head of damages in a case of this kind. It follows, therefore, that the plaintiff's damages in this case are limited to the sum of $5,471 and there must be judgment for the plaintiff with costs.

Judgment for the plaintiff.

Solicitors : *Ibrahim & Almenoar; Braddell Bros.*

LIM SEAH PONG v. PUBLIC PROSECUTOR

[A. Cr. J. (Thomson J.) April 6, 1956]

[Ipoh — Criminal Appeal No. 1 of 1956]

Common Gaming Houses Ordinance, 1953, s. 4(1)(c) — Assisting in the carrying on of a public lottery — Whether "character lottery" is a lottery — Meaning of "distribute or allot".

This was an appeal from the conviction of the appellant on a charge of assisting in the carrying on of a public lottery, to wit the 100, 1,000 and 10,000 characters lottery in contravention of section 4(1)(c) of the Common Gaming Houses Ordinance, 1953. One of the grounds of appeal was that what was being carried on did not amount to a public lottery because the expert's evidence did not make out that money or money's worth was distributed or allotted.

Held: (1) it is not of the essence of a lottery that the fund out of which the prizes are provided should consist only or at all of the sums contributed by those taking part, nor that the amount paid should bear any relation to the total amount paid in by the contributors;

(2) a lottery may involve an element of betting, that is to say, the deliberate selection by the contributor of the event on the occurrence of which he is to be paid;

(3) the "characters lottery" is a lottery and therefore the appellant was rightly convicted.

[**Editorial Note:** This decision differs from that of Wilson J. in **Public Prosecutor v. Lau Ting Kai** (1955) M.L.J. 207. The learned Judge indicated his willingness to give a certificate for further appeal, but no such appeal has been filed. Hill J. in **Public Prosecutor v. Lai Soon Thor & Anor.** (Kedah — Criminal Appeal No. 25 of 1956) expressed his agreement with the views of Thomson J. in this case. Reference may be made to Note on "Characters Lottery — Conflicting decisions" in (1956) M.L.J. xvii.]

Cases referred to :—

(1) *Public Prosecutor v. Lee Ee Teong* (1953) M.L.J. 244, 245.

(2) *Kang Yeow Hooi & Ors. v. Public Prosecutor* (1954) M.L.J. 233.

(3) *Teoh Ng Choon & Ors. Public Prosecutor* (1955) M.L.J. 58.

(4) *Public Prosecutor v. Lau Ting Kai* (1955) M.L.J. 207.

(5) *Public Prosecutor v. Woo Fong* (1955) M.L.J. 235, 236.

(6) *Director of Public Prosecutions v. Phillips* (1935) 1 K.B. 391, 401.

(7) *Barlett v. Parker* (1912) 2 K.B. 497, 502, 503.

(8) *Gordon, Mackay & Co. Ltd. v. Watson* (1936) 2 All E.R. 33, 35.

(9) *Barker v. Mumby* (1939) 1 All E.R. 611.

(10) *Coles v. Odhams Press Ltd.* (1936) 1 K.B. 416, 424, 426.

(11) *Moore v. Elphick* (1945) 2 All E.R. 155, 157, 162.

MAGISTRATE'S CRIMINAL APPEAL.

Lim Kheng Kooi for the appellant.

A. P. Jack (Federal Counsel) for the respondent.

Thomson J. : — The accused in this case was convicted in the Magistrate's Court at Pengkalan Bharu on a charge that he "did assist in the carrying on of a public lottery to wit the 100, 1,000 and 10,000 characters lottery" in contravention of section 4(1) (c) of the Common Gaming Houses Ordinance and was fined $800.

Against that conviction and sentence he has now appealed.

The original grounds of appeal may be summarised as being to the effect that there being no evidence of any overt act of assistance on the part of the appellant in carrying on a public lottery he could only have been convicted by reason of the well-known presumption contained in section 11 of the Ordinance and that that presumption did not arise because the expert evidence which was given did not set out the *modus operandi* of the alleged lottery with sufficient clarity and that the Magistrate could not have read a public lottery into it without importing his own knowledge on the subject. At the hearing of the appeal, however, I allowed the ground of appeal to be amended by the addition of a further ground to the effect that what was being carried out did not amount to a public lottery because the expert's evidence did not make out that money or money's worth was distributed or allotted.

The facts of the case were not in dispute. On 10th September, 1955, Police Officers entered a shop occupied by the appellant at Pantai Remis and found him in possession of four booklets and a quantity of cash. A detective sergeant who claimed, apparently with justice, to be an expert on the subject of the "100 characters lottery" gave a description of its *modus operandi* and gave evidence which clearly connected the contents of the booklets found with such a lottery and which identified the pages of them as duplicates of tickets. On that evidence, if it was accepted, and it was accepted by the Magistrate, the presumption contained in section 11 of the Ordinance clearly arose and the only attempt the accused made to rebut it was to tell the story which not surprisingly was not believed that the papers in question were nothing more than the product of an attempt on his part to teach his wife how to write dates and amounts.

In the case of *Public Prosecutor v. Lee Ee Teong*[1] I held that in these lottery cases when a question arises whether any operation is or is not a lottery "the Court must decide the point on the evidence" and "it is not open to any Judge or Magistrate to import his personal knowledge on the point into a criminal trial so as to help out evidence for the prosecution which would otherwise be inadequate to support a conviction". I made it clear that I so decided with reluctance and only because I felt myself bound to follow a number of old Singapore cases which I cited and I indicated that the Court of Appeal might well wish to consider the point on some future occasion. To my regret, however, in the case of *Kang Yeow Hooi & Ors. v. Public Prosecutor*[2] the Court of Appeal was apparently disposed to follow my judgment.

But neither the Court of Appeal in *Kang's* [2] case, *supra,* nor myself in *Lee's*[1] case, *supra,* went so far as to say that without expert evidence a Court was not at liberty to attach their ordinary meaning to the words of the English language. For example, a Court is perfectly entitled to take it (as was pointed out by Hill J. in the case of *Teoh Ng Choon & Ors. v. Public Prosecutor*[3]) that a pack of cards is a collection of 52 (or 53) pieces of painted pasteboard used in a great variety of games, although probably it is not entitled to say of its own knowledge that in certain games the card known as the "Ace" is more desirable than the card known as the "Jack". Again, a Court is perfectly entitled to say of its own knowledge that a punter is a person who places bets and expects them when successful to be paid and not a person who propels a flat bottomed boat over shallow waters with the aid of a long pole.

Returning to the present case, I agree that the description on the record of the operation which was being carried out is not very clear. This is perhaps not surprising when it is borne in mind that what appears on the record is an attempt of a Magistrate whose native language is not English to reduce to narrative form in the English language what took place in a process of question and answer with the aid of an interpreter between a prosecutor whose native language is not English and a police sergeant who was giving evidence in Cantonese. Nevertheless, I am satisfied that if the whole of the record of evidence is read with care and if the word "punter" is taken in the sense in which it would be taken in Malaya to-day it does set out the *modus operandi* of our old friend the "100 characters lottery" with reasonable precision and it does make clear the connection between the papers found in possession of the appellant and such a system so as to invoke the operation of section 11 of the Ordinance.

So much for the original grounds of appeal.

The additional ground of appeal, however, raises the much more important question of whether the so-called "100 characters lottery" is indeed a lottery within the meaning of the Ordinance.

As far as I am aware this form of gambling was introduced into this country from America, where it is known as "the Pools", about five years ago and has become extremely popular particularly in Perak, Kedah and Penang. Among the Chinese it became known by an expression which is usually translated as "the 100 characters lottery" and in the Malay language it became known as "tikam ekor". About three years ago it began to attract the attention of the Police and since then there have been a very large number of prosecutions, no doubt encouraged by the fact that a proportion of the heavy fines normally imposed on conviction is generally given by reason of section 26 of the Ordinance to the informer responsible for the prosecution. Scores of people have been convicted of offences under the Ordinance on the basis that it is a lottery within the meaning of the Ordinance. At least four Judges have disposed of appeals from Magistrates on the basis that it is such a lottery, and, on at least one occasion, the Court of Appeal has dealt with an appeal on the same basis. It is said, however, that the point of whether or not it was a lottery was neither fully argued nor specifically decided till the recent case of *Public Prosecutor v. Lau Ting Kai*[4] in which Wilson J. decided that it is not a lottery within the meaning of the Ordinance. On that there were two courses open to the Public Prosecutor. He could have accepted the judgment of Wilson J. and stopped all further prosecutions. Or he could have appealed against it. Unfortunately he did not see fit to take either of these courses with the result that there has been very serious doubt in the minds of Magistrates and others concerned with the administration of the law as to what the law on the point really is.

For myself, it is with very great regret that I am compelled to say that I disagree with Wilson J. for in my judgment the operation is a lottery.

In the case of *Public Prosecutor v. Woo Fong*[5] I described the operation in question in terms which I propose to use here to illustrate my argument and which do not differ in any material respect from the facts of the present case. My description was as follows :—

> "What happened was that persons desiring to participate staked amounts of money on what they considered would be the last three digits or the last four digits of the number of the ticket which proved to be the winning ticket in the sweepstake organised by the Singapore Turf Club in connection with a particular horse race to be run at Singapore on 7th May, 1955. If the digits selected proved to be the correct ones then the person making the stake would be paid $700 or $4,000 for each dollar staked according as to whether he had placed his stake on three or four digits. Presumably, though there was no evidence of this, stakes would also be accepted in respect of the last two digits in which case presumably the amount to be paid in the event of the forecast proving correct would be $70."

The Ordinance defines a lottery as follows :—

> "Lottery" includes any game, method or device whereby money or money's worth is distributed or allotted in any manner depending upon or to be determined by chance or lot, whether the same be held, drawn, exercised, or managed within or without the Federation."

and in *Kang's*[2] case, *supra,* Mathew C.J. said with reference to that definition :—

> "In our view, the essence of a lottery is the distribution of money or money's worth which is determined by lot or chance."

In *Lau's*[4] case, *supra,* however, Wilson J. referred to the payments to be made on the winning tickets and said :—

> This money was to be paid out irrespective of how much money had been collected. It does not appear to me that this payment out of the punter can be described as a distribution. In the meaning to be ascribed to the word "distribute" it is stated in the Concise Oxford Dictionary, *inter alia,* that it means "to give a share to each of a number", and again, "to divide into parts". That, would appear to me to apply to a case of the distribution of a fixed sum of prize money but not to the payment by a bookmaker on a bet, whether or not the bet is on a race horse or on a number to be ascertained by chance. So far as the word "allotted" is concerned the same dictionary states that it means "the distribution by lot", so that we come back, to the meaning of the word "distribute".

With great respect, I think His Lordship here gives a much too restricted meaning to the word "distribute". It seems to me that considered in isolation the word as it is used in the Ordinance is merely equivalent to "giving" or "delivering". Its connotation seems to be limited to what happens after the act of distributing is commenced and to have no extension to anything antecedent to that commencement. It connotes some sort of giving out and has no connotation whatsoever relating to the nature or source of what is given. Such would appear to be the ordinary usage of the English language. The Mentri Besar's wife distributes the prizes at the school, the man in the aeroplane distributes the leaflets, the person who passes on goods to their ultimate consumer is known as the "distributor" and the same term is applied to the piece of mechanism in a motor car which ensures that the electricity necessary for ignition passes to all the various cylinders in turn. I do not see how the word can be restricted in meaning in any way by the source or nature or amount of the matter which is distributed. What comes in is contributed. What goes out is distributed. At the church bazaar what are contributed are dollars but what are distributed are the turkey and the box of chocolates, and they are distributed to the holders of the winning tickets irrespective of what has been contributed.

And even if the word be given the restricted meaning of "giving a share" or "dividing into parts" that takes the discussion no further because it only raises the questions "give a share of what?" and "divide

what into parts?". There is nothing in the word itself to shew what is to be shared or divided. In the case of a sweepstake as ordinarily understood it may be a fund contributed by those taking part; on the other hand, it may be a fund provided from any source by the person conducting the operation and so far as definition is concerned there is nothing to prevent it being "divided" or "shared" in accordance with the terms of a previous agreement between the distributor and (if I may coin the expression) the distributees.

It is, I think, significant that the first meaning given to the word "distribute" by the *Concise Oxford Dictionary* which Wilson J. quotes is "deal out" and *Wharton's* Law Lexicon 14th Edition, Page 338 defines "distribution" as "the act of dealing out to others; dispensation". Again, *Stroud's* Judicial Dictionary (3rd Edition, Volume I, Page 852) quotes a Canadian Judge as saying "the word 'distribute' connotes the delivery of something to several persons" and a former Irish Master of the Rolls as saying "nor can I see any solid distinction in law or fact between 'distribute' and 'dispose of' ..... there is nothing etymologically in the word 'distribute' making it different from 'dispose of' ". And then there is a *dictum* of Lord Hewart C.J. in the case of *Director of Public Prosecutions v. Phillips*[6] (which would appear to have escaped the attention of the learned Editors of *'Stroud'*.) His Lordship there referred to the classical definition of a lottery as "a distribution of prizes by lot or chance" and went on to say :—

> "There is no magic in the word "distribution". The word "payment" will do just as well."

So far the word "distribute" has been considered in isolation. It is, however, to be considered in its context. The statutory definition talks of any device "whereby money or money's worth is distributed". It says nothing of where the money or money's worth is to come from and I can find nothing which on the ordinary canons of interpretation would operate to cut that expression down. It is true that the expression "distribute" is cut down but it is only cut down by restricting it to the distribution of money or money's worth.

I am fortified in these views by a number of the English lottery cases. There is no statutory definition of a lottery in England but the Courts there have generally accepted the definition in *Webster's* Dictionary "a distribution of prizes by lot or chance", and I can see no difference in principle between this definition and our statutory definition. In the English cases the question at issue has almost invariably been whether the distribution of prizes has been based purely on chance or whether some exercise of skill has been called for on the part of those taking part. In them, however, there is ample support for three propositions. One is that it is not of the essence of a lottery, that is of a distribution of prizes by chance, that the fund out of which the prizes are provided should consist only or at all of sums contributed by those taking part. The second is that it is not of the essence of a lottery that the amount paid out should bear any relation to the total amount paid in by the contributors. And the third is that a lottery may involve an element of betting, that is to say, the deliberate selection by the contributor of the event on the occurrence of which he is to be paid.

As regards the first of these propositions, I would refer in the first place to the case of *Barlett v. Parker*[7]. In that case what is generally known as a raffle was held in which tickets were sold for 6d. each and a bicycle was given to the holder of the winning ticket which was determined by drawing lots. The bicycle had been presented by a firm which had no connection whatever with the conduct of the raffle and who had no interest in the proceeds of the sale of tickets. A Divisional Court held that this scheme was a lottery and Hidley J. said :—

> "This case therefore raise the question whether it is an offence under s. 41 of the Lotteries Act. 1823, to sell tickets in a lottery each of which gives the purchaser a chance of winning a prize, notwithstanding that the prize which is going to the purchaser of the winning ticket has been presented, and is not to be purchased with the money subscribed. In my opinion that is not material to the offence ..... I think a lottery is held whenever there is a sale of tickets which gives the holders of them the chance of winning a prize. It is selling a chance where one ticket, by chance, entitles the holder to a prize."

Then I would refer to the case of *Gordon, Mackay & Co. Ltd. v. Watson*[8] where Lord Hewart C.J. in holding that the scheme in question in the case, which was very elaborate, was a lottery said :—

> "There is no real difference between what took place here and what was taking place where pounds of tea were being sold and some of the packets contained a coin of the realm. There is not in this case. as there was not in that case, a prize fund to be distributed. That seems to me,, however, to be immaterial."

As regards the second proposition, I would refer to the case of *Barker v. Mumby*[9]. The scheme in question in that case was held to be a lottery. It was briefly that each contribution was to be treated as a bet at specified odds on horses ridden by certain named jockeys winning certain races. In other words, the amount to be paid on each winning ticket if it turned out to be a winning ticket had already been determined at the time the ticket was sold.

The third proposition is based on the cases of *Coles v. Odhams Press Ltd.*[10] and *Moore v. Elphick*[11].

The first of these was a cross-word puzzle case where the competitor (or contributor) himself selected which of a large number of possible solutions to a cross-word puzzle had already been selected as the correct solution by the newspaper conducting the competition. It was a case where, in the words of Lord Hewart, C.J. "persons undertake to make a series of shots at something already decided behind their backs" and again "where the competitors are invited to pay a certain number of pence to have the opportunity of taking blind shots at a hidden target". And His Lordship concluded "I see the word 'lottery' written all over this scheme".

Moore v. Elphick[11] was a football pools case and Humphreys J. dealt with such pools in the following terms :—

> "Father's Pools Club was formed to make use of what are called football pools, a form of combined betting, a modern institution which has eliminated the bookmaker, who used to be one of the two parties to the contract of betting as one used to understand it. By the introduction of what used to be called *pari mutuel*, which afterwards became known as a totalisator scheme, there is now, I suppose, in constant use in the football season at all events, a scheme whereby competitors bet with each other, and the part which would have been played by the bookmaker is now played by someone who merely collects the bets from a large number of people
> .....
> That involves every person who enters one of those pools entering up once a week, because the football matches are played on Saturday — those which are the subject of these pools — in some form or other showing, if it is a horse race, what particular horse or horses, or, if it is a football match, which particular contestant he wants to back to win."

The Court went on to hold that the system of gambling on such pools with which they were concerned was not a lottery but they did so not on the ground that betting was involved but on the ground that the actual betting in question involved an element of skill. This is clear from the whole tenor of both judgments in the case and in particular from the following passage from the judgment of Cassels J. :—

> "A scheme must be looked at as a whole. If chance predominates and is the one outstanding feature, then it comes within the definition of a lottery as laid down by the cases. For instance, it has been decided that it is mere chance that a person will solve a puzzle, of which there are several solutions, in exactly the same way that someone else has already solved it. In this case the justices found that the appellant exercised skill based upon his knowledge of football form, and on his knowledge of what has happened in the football world during the past 10 years."

It is thus clear that in England a scheme whereby prizes are distributed by chance is not rescued from being a lottery either by the fact that the prizes are not paid out of a fund contributed by those taking part or by the fact that the prizes are of a predetermined amount or by the fact that the contributor himself nominates the contingency on the occurrence of which the prize is to be paid to him. And it seems to me that these three considerations are the only ones on which Wilson J. has relied to rescue the so-called "100 characters lottery" from being a lottery within the meaning of our Ordinance.

The truth, of course, is as was said by Humphreys J. in *Coles'*[10] case, *supra* "there will seemingly be never any finality on the question what is a lottery", but as regards the "100 characters lottery" I have no hesitation in respectfully adopting the language of Lord Hewart in *Coles'*[10] case *supra* and saying that I see the word "lottery" written all over it.

I have no hesitation in dismissing the present appeal but in the circumstances I am prepared to give my certificate to enable the matter to be taken further.

Appeal dismissed.

ANNAMALAI CHETTIAR v. YEOH KEE TIN (m.w.)

[C. A. (Mathew C.J., Buhagiar and Good JJ.) January 12, 1956]

[K. L. — F.M. Civil Appeal No. 45 of 1955]

Landlord and Tenant — Claim for possession — Where rent at a lawful rate has been in arrears for fourteen days.

In this case the landlord-respondent claimed to eject the tenant-appellant after notice to quit on the ground that the tenant had been in arrears with rent for the months of September, October and November 1952. The learned trial Judge held that every material allegation in the plaint was admitted in the statement of defence and that the defence disclosed no answer to the claim, and he gave judgment for the landlord as prayed in the plaint. In his defence the tenant raised the question of the standard rent; in para. 2 of the defence he stated that the rent of $130 a month was in excess of the standard rent and in reply to the learned trial Judge he said that the rent should be $100 a month. The main ground of appeal was that the learned trial Judge was wrong in holding that the parties were not at issue on any point of law or fact.

Held: (1) even assuming that the standard rent was $100 a month, the rent paid by the appellant was not sufficient to cover the amount of rent due for three months and therefore the learned trial Judge was correct in finding that the appellant was in arrears of rent for fourteen days and in making the order for ejectment;

(2) the learned trial Judge did not have sufficient evidence before him to order the appellant to pay the respondent the amount due as arrears of rent;

(3) the case must be referred back to the High Court for the determination of the standard rent, in order to find out the actual amounts due to the respondent for rent.

Case referred to :—

(1) *Woon Onn v. Tan Yee Gek* (1950) M.L.J. 231.

COURT OF APPEAL.

Lall Singh Muker for the appellant.

Ng Ek Teong for the respondent.